

Assembly Bill No. 1903

CHAPTER 633

An act to amend Section 831.8 of, and to add and repeal Section 831.9 of, the Government Code, relating to liability, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1903, Hernandez. Liability: flood control and water conservation facilities.

Existing law provides that, except as specified, neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used. Existing law also provides that, except as specified, neither an irrigation district nor an employee thereof nor the state nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits, or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

This bill would provide that, until January 1, 2013, neither a public agency that operates flood control and water conservation facilities nor its employees shall be liable for injuries caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds under prescribed conditions, except as specified. The bill would also specify that nothing in that provision exonerates a public agency or public employee subject to that provision from liability for injury proximately caused by a dangerous condition of public property under specified circumstances.

This bill would require, until January 1, 2013, the County of Los Angeles Department of Public Works to maintain a record of injuries, and the results of any civil actions ensuing therefrom, that are incurred by the public in the unlined flood control channels or adjacent groundwater recharge spreading grounds during groundwater recharge activities and a record of all claims, paid and not paid, arising from those incidents. The bill would require the County of Los Angeles Department of Public Works to annually file a copy of that record with the Judicial Council. This bill would require the Judicial Council to submit a report on these matters to the Legislature on or before January 31, 2012.

Because this bill would create additional duties for local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 831.8 of the Government Code is amended to read:

831.8. (a) Subject to subdivisions (d) and (e), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.

(b) Subject to subdivisions (d) and (e), neither an irrigation district nor an employee thereof nor the state nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits, or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

(c) Subject to subdivisions (d) and (e), neither a public agency operating flood control and water conservation facilities nor its employees are liable under this chapter for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds if, at the time of the injury, the person injured was using the property for any purpose other than that for which the public entity intended it to be used, and, if all of the following conditions are met:

(1) The public agency operates and maintains dams, pipes, channels, and appurtenant facilities to provide flood control protection and water conservation for a county whose population exceeds nine million residents.

(2) The public agency operates facilities to recharge a groundwater basin system which is the primary water supply for more than one million residents.

(3) The groundwater supply is dependent on imported water recharge which must be conducted in accordance with court-imposed basin management restrictions.

(4) The basin recharge activities allow the conservation and storage of both local and imported water supplies when these waters are available.

(5) The public agency posts conspicuous signs warning of any increase in waterflow levels of an unlined flood control channel or any spreading ground receiving water.

(d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property.

(2) The condition created a substantial and unreasonable risk of death or serious bodily harm when the property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(e) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The person injured was less than 12 years of age.

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The person injured, because of his or her immaturity, did not discover the condition or did not appreciate its dangerous character.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(f) Nothing in subdivision (c) exonerates a public agency or public employee subject to that subdivision from liability for injury proximately caused by a dangerous condition of public property if all of the following occur:

(1) The person injured was 16 years of age or younger.

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children 16 years of age or younger using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The person injured did not discover the condition or did not appreciate its dangerous character because of his or her immaturity.

(4) The public entity or public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(g) Subdivisions (c) and (f) shall become inoperative on and after January 1, 2013.

SEC. 2. Section 831.9 is added to the Government Code, to read:

831.9. (a) The County of Los Angeles Department of Public Works shall maintain a record of all known or reported injuries incurred by the public in the unlined flood control channels or adjacent groundwater recharge spreading grounds during the activities of groundwater recharge. The County of Los Angeles Department of Public Works shall also maintain a record of all claims, paid and not paid, including any civil actions or proceedings and their results, arising from those incidents, that were filed against the county. Copies of these records shall be filed annually, no later than January 1 of each year, with the Judicial Council, which shall then submit a report to the Legislature on or before January 31, 2012, on the incidences of injuries incurred, claims asserted, and the results of any civil action or proceeding filed by persons injured at these facilities.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Prior legislation, partially immunizing Los Angeles County from liability for the use of its flood control system to transport and conserve water by recharging underground aquifers, has expired. Over 1,000,000 residents of Los Angeles County benefited from the transport of more than 2,500,000 acre-feet of groundwater during the effective period of the expired legislation. It is therefore necessary for the health and safety of Los Angeles County residents that this act go into immediate effect.